IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 739 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HINESH SUDHAKAR CHOKSHI

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 739 of 2002

MR AJ SHASTRI for Petitioner No. 1

MR AD OZA, PUBLIC PROSECUTOR for Respondent No. 1

MR NK MAJMUDAR for Respondent No. 2-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 05/03/2003

ORAL JUDGEMENT

This petition has been filed by the present petitioner-original complainant under Sec.482 of the Code

of Criminal Procedure for quashing and setting aside the order 4-9-2002 passed by the learned J.M.F.C., Court No.1, Surat, upon application Ex.21 in Criminal Case No.409 of 1999 whereby the learned J.M.F.C. has allowed the application.

2. Heard learned counsel appearing for the respective parties.

3. It is argued by Mr.Shastri, learned counsel for the petitioner, that the order was passed by the learned Magistrate without recording evidence of the party concerned. It is also argued that the reasons assigned by the court below in dismissing the complaint are based on assumption and presumption and without affording any opportunity of being heard to the party concerned and, therefore, impugned order passed by the court below may be quashed and set aside. He has drawn my attention towards Annexure-C, page 28 which is an application submitted in Criminal Case No.3724 of 2002 by the accused and which application has been rejected by the learned Magistrate, Surat.

3.1 He has relied upon the decision of the Apex Court rendered in the case of Bindeshwari Prasad Singh Vs Kali Singh reported in AIR 1977 Supreme Court p.2432 more particularly towards para 4 which runs as under:

> "There is no provision in Cr.P.C. empowering a Magistrate to review or recall a judicial order passed by Him. Inherent powers under Section 561-A are only given to High Court and unlike S.151, C.P.C., subordinate criminal courts have no inherent powers. 1976 Cri.LJ 1515 (pat), Reversed."

4. Mr.N.K.Majmudar, learned counsel for the respondent No.2-original accused has objected granting of this petition. It is contended that court can drop the proceedings at any stage looking to the facts and circumstances of the case, however, since the impugned order passed by the court below is just, legal and proper, this Court may not interfere with the same.

5. It appears that application Ex.21 submitted by the original accused requesting to discharge them under Sec.482, Cr.P.C. or to drop the proceedings was allowed by the learned Magistrate on various aspects of the matter without recording the evidence of party concerned. Though various conclusions have been arrived at by the learned Magistrate, she has given the finding on certain

aspects of the matter which was not required to be given by her. I am unable to understand as to on what basis she has arrived at such a conclusion more particularly when the reasons are not convincing. Though no order has been passed by her as to the dismissal of the complaint, the impugned order indirectly resulted into dismissal of the complaint and hence, the impugned order requires to be quashed and set aside by allowing this petition.

6. This petition is allowed. Order dated 4-9-2002 (Annexure-B) passed by the learned J.M.F.C., Court No.1, Surat, upon application Ex.21 in Criminal Case No.409 of 1999 filed by the respondent Nos.2 and 3 is quashed and set aside. Rule is made absolute.

(R.P.DHOLAKIA,J.)

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